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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

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7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 March 21, 2023

17 10:03 AM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

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1 HEARING re Debtor's Motion Seeking Entry of an Order (I)
2 Authorizing the Debtors to Enter into Witness Cooperation
3 Agreements with Certain Current and Former Employees, (II)
4 Authorizing Reimbursement of Past and Future Out-Of-Pocket
5 Expenses of Cooperating Witnesses, Including Attorneys Fees,
6 and (III) Granting Related Relief. Doc## 2147, 2223, 2227,
7 2230)

8

9 HEARING re Joint Motion for Entry of an Order (I) Approving
10 (A) the Settlement by and Among the Debtors, the Committee,
11 and the Custody Ad Hoc Group and (B) the Election Form and
12 (II) Granting Related Relief. (Doc## 2148, 2234, 1958,
13 2149, 2176)

14

15 HEARING re Debtors Objection to Proof of Claim No. 23959 of
16 Rebecca Gallagher. (Doc# 2106, 2119, 2228, 2267, 2268) .

17

18 HEARING re Debtors Objection to Proof of Claim No. 24480 of
19 Daniel A. Frishberg. (Doc# 2107, 2119, 2237, 2267, 2268)

20

21 HEARING re Debtor's First Omnibus Objection to Certain (A)
22 Amended Claims, (B) Duplicate Claims, (C) Non-Debtor Claims,
23 (D) Unsupported Claims, and (E) Inaccurately Supported
24 Claims. (Doc## 2103, 2119, 1368, 1846, 2090, 2267)

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1 HEARING re Debtor's Objection to Proof of Claim No. 24604 of
2 Immanuel Herrmann. (Doc# 2105, 2119, 2238, 2267, 2268)

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P R O C E E D I N G S

2 THE COURT: Thank you very much, and good morning
3 to everybody. I have the amended agenda for the hearing in
4 front of me. Mr. Koenig, are you going to begin?

5 MR. KOENIG: Yes. Good morning, Your Honor.

6 Chris Koenig from Kirkland and Ellis for the Debtors. We'll
7 proceed. As you noted, we filed an amended agenda last
8 night. That reflected two adjournments. First, we had
9 filed a motion to approve bid protections for our Stalking
10 Horse bidder and proposed plan sponsor. That's NovaWulf
11 Digital Management.

12 Since the objections were filed to that bid
13 protections motion last week, we've been in discussions with
14 NovaWulf about ways to potentially improve the terms of the
15 bid protections for the benefit of the Debtors and all of
16 our stakeholders. We adjourned that motion to the hearing
17 on Thursday morning to allow us to finalize the terms of our
18 revised agreement with NovaWulf, but we expect to announce
19 improved terms of the bid protections as part of our reply
20 in support of the motion that we would file tomorrow ahead
21 of the hearing on Thursday.

22 We had also filed a motion to reimburse expenses
23 of cooperating witnesses. We adjourned that to a hearing on
24 Thursday, March 30th to allow additional time for us to
25 discuss potential changes to the proposed order with the

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1 Committee and the United States Trustee, and then
2 alternatively, amended agenda for today. So first up now is
3 the Custody Settlement Motion, which was filed at Docket
4 Number 2148. We announced the settlement and principal at
5 the omnibus hearing on February 15th. This settlement fully
6 resolves long-running litigation between the Debtors, the
7 Committee, and the Custody Ad Hoc Group.

8 The settlement is not just with the members of the
9 Custody Ad Hoc Group. It will be open to all custody
10 accountholders that elect to participate in the settlement
11 excluding current and former employees and insiders of the
12 Debtors. And just to recap for a moment, the Custody Ad Hoc
13 Group filed an adversary complaint in August against the
14 Debtors seeking a declaratory judgment that assets that are
15 held in custody are not property of the Debtor's estate and
16 should be promptly returned to the applicable
17 accountholders.

18 We the Committee and the Custody Ad Hoc Group
19 entered into a scheduling stipulation that divided the
20 issues into two phases. In phase one, the Court held a
21 hearing in December on whether custody assets were property
22 of the estate and whether the Debtors could nonetheless
23 retain such assets for the time being in light of potential
24 preferences and other claims and causes of action that the
25 Debtors held.

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1 Following phase one, although the Court determined
2 that the assets and the custody wallets were not property of
3 the Debtor's estate, the Debtors did not have to distribute
4 those assets at this time, and the parties proceeded to
5 phase two. Phase two would have included discovery and
6 briefing and argument with respect to potential claims and
7 causes of action and the defenses to preference claims,
8 including the ordinary course of business defense and the
9 safe harbor under Section 546(e) of the Bankruptcy Code.
10 Phase one -- I'm sorry, Your Honor.

11 THE COURT: No, go ahead. I just coughed.

12 MR. KOENIG: Oh, I'm sorry. Phase one also
13 resulted in the Debtors having to reserve six percent of the
14 custody claims that could withdraw under our withdrawal
15 order while the parties discussed this shortfall issue.
16 Given the time, risk, and expense associated with litigating
17 phase two, the Debtors, the Committee, and the Custody Ad
18 Hoc Group engaged in good faith arm's length discussions,
19 and ultimately agreed to the settlement embodied in the
20 motion and the settlement agreement, which we filed
21 yesterday at Docket Number 2271.

22 So, in short, the parties agreed to settle all
23 claims and causes of action relating to the custody assets
24 and the custody claims as follows. Participating custody
25 accountholders will be entitled to withdraw a total of 72.5

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1 percent of their digital assets in two stages. The first
2 36.25 percent can be withdrawn after the settlement is
3 approved. The second half will be withdrawable after the
4 effective date of a Chapter 11 plan, or another date if the
5 Debtors' Chapter 11 cases are dismissed or converted, or if
6 the effective date of the plan does not occur by the end of
7 2023.

8 This amounts to an agreed 27.5 haircut on account
9 of the potential claims and causes of action that the
10 Debtors' estates could bring with respect to custody claims
11 that are being settled under today's settlement. That
12 includes potential preference claims and offset claims for
13 custody holders that also held loans with the Debtors.

14 This agreement also includes a waiver of claims
15 that would have arisen pursuant to Bankruptcy Code Section
16 502(h) on account of successful preference claims. So this
17 will fully and finally resolve the custody claims of the
18 participating holders. This settlement will resolve phase
19 two as to the Custody Ad Hoc Group. The settlement includes
20 a standstill of that litigation until the plan effective
21 date, and this also resolves the six percent shortfall
22 issue.

23 Once this settlement is approved, all of the
24 custody holders that can currently withdraw 94 percent under
25 the withdrawal order will be able to withdraw the full 100

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1 percent. That means that if an eligible custody holder has
2 already withdrawn 94 percent, they can go back and withdraw
3 the remaining 6 percent less transaction fees. And if an
4 eligible custody holder is not withdrawn at all, they can
5 simply withdraw the entire 100 percent in one slot.

6 So Your Honor, in light of the costs and risk and
7 time associated with fully litigating phase two, including
8 the discovery that would have to occur, the Debtors believe
9 that the settlement is fair and reasonable, and should be
10 approved as above the lowest point in the range of
11 reasonableness as required by Drexel Burnham in this
12 district. The settlement fully resolves the litigation with
13 the Custody Ad Hoc Group, and allows all other custody
14 accountholders to participate in the settlement should they
15 choose to do so.

16 Participation in the settlement is an election,
17 not mandatory. Custody accountholders would receive notice
18 and will have 30 days to choose whether they want to
19 participate in the settlement or not. To be clear, we're
20 expecting to offer the same settlement in our forthcoming
21 Chapter 11 plan as well. So if a custody accountholder
22 misses the initial 30-day deadline, they'll have another
23 opportunity to participate. And again, this settlement
24 excludes current and former employees and insiders of the
25 Debtors. There was just one objection to the motion filed

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1 by Mr. Hermann and Mr. Frishberg. We filed a reply to their
2 objection at Docket Number 2275 that addressed the items
3 that were raised in their objection.

4 So Your Honor, with that introduction out of the
5 way, you know, I'm happy to take whatever questions Your
6 Honor has for me at this point. And if not, I concede the
7 lectern to the other parties, and I can come back and
8 respond to whatever objections are raised this morning by
9 Mr. Hermann and Mr. Frishberg.

10 THE COURT: All right. I have some questions.
11 I'm not sure whether you or someone on behalf of the
12 Committee should be the one to answer them. Let me put the
13 questions out. So first is with respect to the resolution
14 of the shortfall issue. Essentially it's resolved solely in
15 favor of the custody holders rather than some other split.
16 And I want to ask -- I guess -- I don't know, Mr. Colodny,
17 are you the one who's going to speak on behalf of the
18 Committee? I would just like to hear from someone on behalf
19 of the Committee with respect to the resolution of the
20 shortfall issue.

21 MR. COLODNY: Yes, Your Honor. Aaron Colodny on
22 behalf of White and Case. Your Honor, when we were
23 addressing the shortfall issue, the main point was that
24 there weren't enough coins in the custody account to satisfy
25 all holders. Under the settlement, if we receive any

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1 reasonable amount of participation, there will be enough
2 coins. And so we became comfortable that the amounts that
3 were (indiscernible) for custody users are going to be
4 sufficient to pay the custody holders, which allowed us to
5 get comfortable with the release of that additional six
6 percent.

7 THE COURT: All right. Thank you. Mr. Koenig, is
8 there anything you want to add on -- just on that point of
9 the shortfall resolution?

10 MR. KOENIG: No, Your Honor. No, Your Honor. I
11 agree with Mr. Colodny.

12 THE COURT: All right. So my next question is
13 whether parties who opt in to the settlement during the
14 election period have an obligation to vote in favor of the
15 plan in order to receive the second payment.

16 MR. KOENIG: Your Honor, yes, that's right.
17 That's the way that it's structured is if you opt in --
18 essentially, this is a settlement that would've been
19 provided under the plan. And what we've tried to do is to
20 allow an early election option to allow folks to get their
21 assets earlier as part of a two-phase approach. But yes,
22 they would have to vote yes as part of the second phase.
23 And that's -- and we would require parties that vote -- to
24 participate in the settlement under the plan will also have
25 to vote yes to accept the plan.

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1 THE COURT: Well, that's what my next question is.
2 Let's assume that custody holders don't opt in, in the early
3 period, and let's assume they either abstain or vote against
4 the plan, but the plan is nevertheless confirmed. Will
5 those custody accountholders benefit from essentially the
6 settlement, which will be wrapped into the plan as well if
7 the plan is confirmed either over their abstention or
8 negative votes?

9 MR. KOENIG: Yes, Your Honor. So the -- what's
10 going to happen under the plan is it's a party-by-party
11 election because it's a settlement of claims and causes of
12 action by and between the Debtors and that individual. And
13 that individual may have facts and circumstances that make
14 that cause of action stronger or weaker. And it's a party-
15 by-party election rather than a class election under the
16 plan.

17 What would happen is if a party abstains or votes
18 against the plan, they won't participate in the settlement.
19 We will set aside 100 percent of the balance of their
20 custody account. And then what will happen is there will be
21 a period of time after the plan where the successor to the
22 Debtors, the litigation administrator is what we're calling
23 it, will have the opportunity to bring preference actions
24 against custody accountholders or not. It's up to the
25 litigation administrator.

1 And you know, what happens with respect to non-
2 participating custody holders will be decided following the
3 plan effective date. Either the litigation administrator
4 brings preferences or other claims and causes of action and
5 this court resolves them, or the litigation administrator
6 does not within that time period. And the custody holder
7 would get 100 percent of the assets at that time. So it's
8 sort of a, you know, wait-and-see approach. It would either
9 be litigated or not, and then the result for that non-
10 participating custody holder will be cited after the plan
11 effective date after the litigation administrator decides
12 what to do.

13 THE COURT: But there is the decision of custody
14 holders not to opt in, will not preclude -- if the plan is
15 confirmed, it will not preclude them from recovering. They
16 may be subject to preference actions by the plan
17 administrator or the trust, but they're not foreclosed from
18 recovering. Is that correct?

19 MR. KOENIG: That's right. That's exactly right,
20 Your Honor. What's happening is they're not settling claims
21 and causes of actions. So they will get to argue that
22 they're entitled to 100 percent of the custody assets, and
23 the litigation administrator will be able to bring claims
24 and causes of action. And that litigation will continue on
25 a person-by-person basis.

1 What we're offering here is an option to settle
2 those claims and causes of actions and obtain certainty, and
3 they you don't have to wait to see what happens following
4 the plan effective date, and whether the litigation
5 administrator pursues those claims and causes of action,
6 including preferences.

7 THE COURT: Okay. My next question is I didn't
8 see the definition of insider for purposes of this
9 settlement in the settlement agreement. Is it defined? Did
10 I miss it?

11 MR. KOENIG: Your Honor, I'd have to go back and
12 check. I mean, our intent would be for it to have the same
13 meaning as in the bankruptcy code.

14 THE COURT: Could you just check? I didn't see
15 it, and my clerks didn't see it, and I just want to be clear
16 on -- since the settlement does not apply to insiders that
17 it's clear who's precluded from taking advantage of it.
18 During your initial remarks, you talked about present or
19 former employees. Is that correct?

20 MR. KOENIG: Employees or -- present or former
21 employees or insiders, Your Honor.

22 THE COURT: Okay.

23 MR. KOENIG: Yes, that's right.

24 THE COURT: Could you just have either you or
25 someone else look and see if I just missed it?

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1 MR. KOENIG: Yeah. I'll be sure to do so, Your
2 Honor, and I'm just going to grab my phone so that somebody
3 can tell me.

4 THE COURT: Okay.

5 MR. KOENIG: I'll just keep an eye on it. Thank
6 you.

7 THE COURT: Let me see if I have other questions.
8 Bear with me. All right. Let me ask Mr. Colodny, do you
9 want to be heard?

10 MR. COLODNY: Sure, Your Honor. I think Mr.
11 Koenig did a great job of summarizing the settlement, so I
12 won't retread that ground. You know, a couple of points I
13 wanted to emphasize is first, you know, we heard that
14 custody holders wanted to receive a portion of their
15 recovery sooner rather than later. This settlement allows
16 that. The settlement is also entirely voluntary.

17 As you pointed out, Your Honor, if custody holders
18 wish to assert their rights with respect to 100 percent,
19 they'll have the opportunity to do that. What it does,
20 though, is it puts off litigation about that issue now with
21 the consensual resolution of Mr. Kotliar and his clients so
22 that we can focus on getting these cases to a conclusion,
23 which we've all been working very hard to do.

24 That said, we think that it presents a very
25 reasonable settlement of the causes of action against the

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1 custody holders, and we thank everyone for their efforts in
2 reaching this result and the Court for resolving some of the
3 gating issues, and we support the settlement.

4 THE COURT: Okay. Mr. Kotliar?

5 MR. KOTLIAR: Hi. Good morning. Bryan Kotliar,
6 Togut Segal and Segal, counsel for the Ad Hoc Group of
7 Custodial Accountholders. Can you hear me okay, Your Honor?

8 THE COURT: Yes, I can. Very well. Thank you.

9 MR. KOTLIAR: Thank you. We echo everything that
10 the Debtors and the Committee have said. Some of the
11 lengthy history of our involvement in these cases from
12 August through the settlement is detailed in the pleadings
13 and the support letter. I'm not going to repeat all of that
14 history here, but I will say that even beyond what's
15 described in the pleadings, behind the scenes has really
16 been a roller coaster ride from diligence negotiations to
17 litigation to back to negotiations.

18 There's been a lot of ups and downs, but I think
19 where we've arrived at, we said at the last hearing, it's a
20 settlement where I think everyone is just a little bit
21 unhappy with it, which I think means we have
22 (indiscernible).

23 THE COURT: It's usually the best settlement.

24 MR. KOTLIAR: I'm sorry, Your Honor. We echo all
25 the comments about the uncertainty and time and expense that

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1 the settlement avoids. I think importantly the settlement
2 does a few things that I want to note for the record. It
3 gets a portion of custody holders cryptocurrency back to
4 them sooner rather than later. It provides a full mutual
5 release with respect to the custody claims. Your Honor had
6 questions about how the voting works. Custody
7 accountholders that participate in the settlement are
8 obligated to vote their custody claims in connection with
9 the plan, but they're not obligated to vote any other
10 interest or claims that they have with respect to the plan.
11 That's all kind of dealt with separately.

12 The Ad Hoc Group led the negotiations, the
13 litigation, and the diligence that I talked about, but this
14 settlement is an offer that's made available to all custody
15 accountholders other than current informer insiders and
16 employees. There's no preferential treatment for the Ad Hoc
17 Group. Or I guess I shouldn't use that word. There's no
18 different treatment for the Ad Hoc Group as compared to
19 other custody accountholders. Everyone gets the same offer.

20 And with that, we thank the Debtors and the
21 Committee and the Court and your chambers for your time and
22 everyone's efforts in getting us to the settlement today.

23 THE COURT: Thank you. Is there anybody else who
24 wishes to speak in support of the settlement? All right.
25 Hearing none, let me turn to Mr. Hermann who filed an

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1 objection along with Mr. Frishberg.

2 MR. HERMANN: Thank you, Your Honor. Immanuel
3 Herrmann, pro se Creditor. First off, I want to reiterate
4 it was a limited objection. I support 72 and a half percent
5 plain and simple, and agree that it's a good final
6 settlement of all of this. Second, it's not correct that I
7 objected to legal fees being paid. I did not. In other
8 words, I support a final settlement of 72 and a half percent
9 for custody and do not have a problem with the legal fees
10 being paid.

11 That said, the leaders of the Custody Ad Hoc
12 Group, the Creditors, not the lawyers, have been very clear
13 that their goal is to get 100 percent for as many Creditors
14 as possible upon plan confirmation for those who accept the
15 settlement by getting a final plan that has a preference
16 threshold of at least 100,000 if not more. And by tying the
17 threshold and the plan, the overall preference threshold to
18 withdrawals off the platform so that custody and withdrawals
19 off the platform would have the same threshold.

20 So I wasn't happy to send in this objection, but
21 when I had heard it was 72 and a half percent, I supported
22 it. And then I actually come to wonder by the time this is
23 all said and done if you end up with something like 90
24 percent or more of the accounts actually just it being 100
25 percent. So perhaps the Debtors are correct that this all

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1 just can raised via the final plan. Perhaps not. More
2 likely, the preference threshold is going to be the same for
3 custody as it is for people who withdrew off the platform.
4 So that's where the objection comes in. Then on the insider
5 issues, I was just suggesting a simple checkbox people would
6 check and that's it. And then --

7 THE COURT: Mr. Hermann, that I don't understand
8 just if you could be clear about what you mean about that.

9 MR. HERMANN: Oh, sure. That if people just
10 checked a checkbox that they didn't withdraw based on
11 insider information. That's -- it's sort of lie when I take
12 an Ikea class action settlement, and there's a checkbox to
13 check, and it's electronic, and it's part of just accepting
14 the class action.

15 THE COURT: All right. Anything else you want to
16 add?

17 MR. HERMANN: Yeah, just one other thing, Your
18 Honor. So you know, in terms of the evidence that I didn't
19 want to go through the effort to enter here, I would prefer,
20 frankly, not to deal with all of it through the court. You
21 know, my feeling was if this evidence would actually make a
22 difference we could deal with it, but if it wouldn't, then I
23 just didn't want to go through all of that. So I guess the
24 last thing I'll add is, you know, I'm concerned that
25 basically unimpaired people may end up voting on a plan

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1 also. I don't know if that's true or not or what not.

2 THE COURT: Unimpaired Creditors don't vote. The
3 class of only impaired Creditors vote on a plan, which I --
4 whether there are any classes of unimpaired Creditors is
5 certainly not a -- anyway, we're not at that stage, but only
6 impaired Creditors vote.

7 MR. HERMANN: Yeah. And then the final thing is
8 I'm just concerned what happens to those. You have disputed
9 claims against custody, which includes my claim, and that's
10 pretty much it.

11 THE COURT: Okay. All right. I think -- Mr.
12 Frishberg, I don't think you've appeared today. If you're
13 on, go ahead. I -- I'm happy to hear you.

14 CLERK: I don't see him on.

15 THE COURT: Okay.

16 MR. HERMANN: I believe, Your Honor, that he is on
17 a flight this morning.

18 THE COURT: Okay. All right. Thank you, Mr.
19 Hermann. All right. Is there anybody else who wishes to
20 speak in opposition to the proposed settlement.

21 MS. CORNELL: Your Honor, Shara Cornell on behalf
22 of the Office of the United States Trustee if I may?

23 THE COURT: Go ahead, Ms. Cornell.

24 MS. CORNELL: Thank you. The United States
25 Trustee doesn't have an objection to the proposed

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1 settlement. However, the United States Trustee just wishes
2 to reserve its rights with respect to plan confirmation and
3 disclosure, and --

4 THE COURT: What plan -- you don't have to reserve
5 your right. You have that right.

6 MS. CORNELL: Exactly, but with respect to
7 informed notice of any releases and exculpations for any of
8 the custody holders and their votes in favor of the plan,
9 obviously that's some concern, and we just wanted to put
10 that on the record. Thank you.

11 THE COURT: Okay. Thank you. So there are two
12 hands raised. Mr. Serrur. I may be mispronouncing your
13 name, but if you want to unmute and go ahead and speak.

14 MR. SERRUR: Yes. Thanks, Your Honor. My name is
15 Ezra Serrur. I'm a Creditor in this case via a transfer of
16 a claim. I manage a partnership that acquired a claim. And
17 as, you know, the professionals and Your Honor, you know, is
18 aware, you know, claims trading is a very useful process,
19 particularly in this case where not all original Creditors,
20 you know, have the luxury to wait out a long bankruptcy, and
21 depending on their, you know, particular circumstances might
22 need liquidity.

23 I just had one comment, it's not an objection to
24 this settlement. I'm for this settlement, but it's related
25 to the logistics of the distribution. And just to give some

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1 color related to the pure custody distribution, what was
2 ultimately required in the process ultimately included four
3 claims that were transferred to, you know, to claim buyers
4 for the original Creditor to record a video of themselves
5 requesting the specific amount to be transferred, you know,
6 to the buyer.

7 And I can just tell you from experience, you know,
8 many of the claim sellers, when they sell their claim, you
9 know, they are under the impression that they're able to
10 walk away from this situation, which is very traumatic to
11 them as you can imagine. And you know, having to, you know,
12 record a video of themselves being reminded, you know, of
13 the situation, perhaps being reminded of the situation that
14 they were, you know, in the situation that they have to sell
15 their claim at a discount and perhaps, you know, maybe the
16 distribution was different than what they might've expected.

17 I just want -- want to request for this custody
18 distribution under the settlement, if the Debtor can work
19 with transferees where it is very, very unambiguous that the
20 custody account was (indiscernible), if we can work together
21 in a way where we can avoid the original Creditor having to
22 record a video of themselves specifically instructing
23 exactly how much, you know, coins or money is to be
24 transferred to the buyer of the claim just so that, you
25 know, they don't have to, you know, be reminded of the

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1 situation, or maybe, you know, be tormented by, you know,
2 the fact that they were, you know, not in a position to hold
3 their claim to the end of the bankruptcy.

4 THE COURT: Well, Mr. Serrur, I think the reason
5 for the video was because of phishing and other attempts at
6 hacking. And the last thing that I think the Debtors or the
7 Committee or the Court wants is any issue of someone
8 purporting to be an assignee of a claim that really isn't,
9 didn't have a valid assignment of the claim. I'll hear Mr.
10 Koenig and perhaps Mr. Colodny on this point, but my
11 understanding of the reasons for that requirement was
12 because of repeated phishing efforts that have gone on in
13 this case and that have jeopardized the security of
14 claimholders. But I've heard you. I'll give the Debtor and
15 the Committee a chance. But first, Mr. Iovine, do you want
16 to be heard?

17 MR. IOVINE: Yes. This is Jason Iovine, pro se
18 Creditor. This isn't an objection as a question. For the
19 people that sent in funds after petition date like me, I
20 filled out my claim and I added those to the custody because
21 that's where it is in an account if you look at your Celsius
22 account. How does that affect anything, or is just that
23 going to be distributed? Because the -- it was assets sent
24 in after the petition date.

25 THE COURT: All right. Let me ask. Mr. Koenig,

1 you want to respond?

2 MR. IOVINE: Thank you.

3 MR. KOENIG: Yes, Your Honor. Chris Koenig,
4 Kirkland and Ellis for the Debtor. So what's going to
5 happen there is we're in the process of opening the
6 withdrawals for the post-petition transfers. And what will
7 happen is after individuals that have made those transfers
8 have actually withdrawn off the platform, their claim will
9 have to be adjusted in some way through our claims objection
10 or otherwise. But this custody settlement doesn't affect
11 that right. We're in the process of opening up those post-
12 petition withdrawals, but we will certainly deal with that
13 at the appropriate time.

14 THE COURT: So if I understand, the -- those
15 deposits are being -- they're not subject to this haircut.
16 Those are being returned in full. Am I correct?

17 MR. KOENIG: That's right, Your Honor. They would
18 be returned in full. And what I believe the Claimant is
19 talking about is he on his proof of claim form indicated
20 that custody included this post-petition amount. The amount
21 that's in the Debtor's schedules and the amount that would
22 be returned pursuant to the settlement would not include
23 that. That'll be part of a claims reconciliation process.
24 And as I indicated, assuming the Claimant withdraws, I would
25 expect that we would object to that claim and say, you know,

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1 you already -- that piece of it's already been satisfied.
2 So that's for the claims reconciliation process, not for
3 today. But you're right, Your Honor.

4 THE COURT: From my standpoint, though, that
5 portion of any claim is being paid in full rather than only
6 the 72.5 percent.

7 MR. KOENIG: Correct, Your Honor. That will be
8 paid in full as a post-petition deposit --

9 THE COURT: Right.

10 MR. KOENIG: -- and is not a custody claim that is
11 subject to the haircut as part of the settlement agreement.

12 THE COURT: All right. Thank you very much. Now,
13 could you respond to Mr. Serrur's comments about -- he seems
14 -- he didn't file an objection, but he --

15 MR. KOENIG: Yes.

16 THE COURT: -- as an assignee of a claim has
17 raised concerns about the procedure that was being applied.

18 MR. KOENIG: Understood, Your Honor. So the
19 company has been very focused on security in these cases, as
20 has the Committee. We've been in close contact with the
21 Committee about our security protocols. And of course as
22 Your Honor mentioned, there's been a variety of phishing and
23 scamming attempts as part of these cases. So we've been
24 very careful to make sure that the people that withdraw
25 coins off the platform are actually entitled to do so or are

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1 actually the right people to do so.

2 And we've put in place procedures that, depending
3 on the amount of the claim and if there are other, you know,
4 yellow flags or red flags that come up as part of the
5 security process that is undertaken as part of withdrawing
6 coins from the platform, there may be additional security
7 measures that are necessary in order to confirm the identity
8 of the withdrawing party. And that can include, you know,
9 making a video and ensuring that the person that is trying
10 to withdraw is actually the person that they assert to be.

11 So you know, we believe that it is reasonable and
12 appropriate to do so, and this is consistent with our pre-
13 petition security efforts, which are heightened now that
14 we're in bankruptcy, and that we need to make absolutely
15 certain that people that are withdrawing pursuant to a court
16 order are the right person.

17 So I mean, frankly, Your Honor, the fact that a
18 claims buyer is objecting to our security protocols is,
19 frankly a little bit offensive. I understand that it might
20 make it easier for them to realize on the claim that they've
21 purchased, but from our perspective, the most important
22 thing is to ensure the safety and security of our
23 withdrawals, and that transfers go to the person that
24 they're intended to go to and not somebody else. So that's
25 why we engaged in these protocols in this way.

1 THE COURT: All right. Mr. Colodny, do you want
2 to be heard on this?

3 MR. COLODNY: Yes, Your Honor. I can confirm that
4 we've been working with the Debtors on the withdrawal
5 process. One of the things that we were focused on is the
6 first custody withdrawals, and we've had regular meetings
7 with the Debtors and their employees to make sure those are
8 going according to plan. I think that -- I believe Mr.
9 Koenig gave the Court an update on that at the last hearing,
10 and we've been very happy with the level of security and
11 engagement of the company in doing so.

12 I think that that is key for everyone here, right?
13 The whole point of this case in bankruptcy is to equitably
14 return people's assets. And one of the key aspects of that
15 is making sure they go to the right people. And I think
16 that Mr. Koenig and his team have been absolutely focused on
17 that, and I thank them for those efforts.

18 THE COURT: All right. Mr. Kotliar, do you want
19 to be heard on this point?

20 MR. KOTLIAR: Your Honor, I would just add that I
21 think we understand the need for security, and there's
22 heightened security concerns in this case. I just don't
23 want to end up in a situation looking down the line where
24 valid claim transfers have happened, but because that
25 doesn't plug into the Debtor's account infrastructure, it

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1 precludes people from getting back the assets they're
2 entitled to. And then later on it's, well, that's unclaimed
3 distributions, and that somehow goes back to the estate. So
4 I think we're making baby steps towards getting to the right
5 place, but on the back end I don't want this to hold up
6 people getting back assets that they're entitled to.

7 THE COURT: Well, the only thing I would say is
8 that if issues arise, for example, because the original
9 claimholder declines to provide the video if that's what's
10 required, the Court is certainly able to deal with that on a
11 one-off basis. And so Mr. Serrur, if -- you may not like as
12 a claim buyer this additional step, I have a feeling that if
13 it arises at all, it will happen infrequently, and the Court
14 will be prepared to deal with it if and when it happens.

15 So for example, if the transferor declines to
16 provide what's required in order for the transferee to be
17 able to recover assets off the platform, or later in the
18 case if there's a confirmed plan, the Court will deal with
19 it then. I'm very concerned about the efforts that have
20 been made through phishing or otherwise in this case, and I
21 think that the additional precautions that have been put in
22 place are absolutely appropriate in the circumstances of
23 this case. Not necessarily in every case, but the history
24 of this case so far has shown that the concerns of the
25 Debtor and the Committee and of others are clearly

1 appropriate here. Mr. Serrur, you can put your hand down
2 because I'm not going to call on you again. Is there
3 anybody else who wishes to be heard in opposition to the
4 settlement? All right.

5 I'm not going to go through -- I'm going to rule
6 now. I'm approving the settlement. I'm not going through a
7 recitation of the terms. I think those are all quite clear,
8 so I'm just going to briefly talk about the standards for
9 approval of settlements and the reason for my approval here.

10 So Bankruptcy Rule 9019(a) sets forth the
11 standards on a motion by a trustee, and after notice and a
12 hearing, the court may approve a compromise or settlement.
13 I won't read the entire thing, the entire rule, but the
14 standards are settlements are favored in bankruptcy and are,
15 in fact, encouraged. In -- before approving a settlement, a
16 court must determine that it is fair and equitable and in
17 the best interests of the estate. See *In re Drexel Burnham*,
18 134 B.R. 493 at 496 (Bankr. S.D.N.Y. 1991).

19 There are numerous cases that set forth that same
20 proposition. In the Second Circuit, the Second Circuit
21 decision in *In re Iridium Operating LLC*, 478 F.3d 452 (2nd
22 Cir. 2007) set forth seven non-exclusive factors for courts
23 to consider in deciding whether to approve a settlement. A
24 couple of important points I think. In passing upon a
25 proposed settlement, the bankruptcy court does not

1 substitute its judgment for that of the trustee.

2 The bankruptcy court is not required to decide the
3 numerous questions of law and fact raised by objectors.

4 Here, there's only a very limited objection, and I
5 appreciate Mr. Hermann's comments about his concerns. So
6 rather, the Court should canvass the issues and see whether
7 the settlement falls below the lowest point in the range of
8 reasonableness.

9 And while approval of the settlement rests in the
10 court's sound discretion, the Debtor's business judgment
11 should not be ignored. And in addition, the court may give
12 weight to the informed judgment of the Trustees or Debtor-in
13 Possession and their counsel that a compromise is fair and
14 equitable. Here, this proposed settlement is the result of
15 really a protracted effort by Debtors, the Committee, Mr.
16 Kotliar's firm, other counsel as well. And I'm really quite
17 satisfied that this is really an arm's length settlement.
18 It is in the best interest of the estate.

19 Let me just briefly talk about, you know, Iridium
20 sets forth the seven non-exclusive factors. Factors one and
21 two, the balance between the litigation's possibility of
22 success and the settlement's future benefits, and the
23 likelihood of complex and protracted litigation. I find
24 here that this proposed settlement satisfied all of those
25 requirements in factors one and two of the Iridium test.

1 Factor three is the paramount interest of
2 Creditors. I believe that this settlement does that as
3 well. The costs associated with any related litigation
4 would drain the Debtors' estates and further delay Creditor
5 recoveries, and that because custody holders have the right
6 to opt in, no one is being forced to accept the settlement.
7 I think that's quite important here.

8 I've already asked my questions about whether
9 people who opt into the settlement are committing to vote in
10 favor of the plan. I'm satisfied by the answers I've
11 received there. Certainly if people don't opt into the
12 settlement and they nevertheless vote against the plan,
13 while they may be subject to avoidance claims if the plan
14 administrator decides to pursue them, they're not really
15 giving away any rights that they would otherwise have.

16 In any event, I've considered each of the seven
17 factors set forth in Iridium to the extent applicable in the
18 circumstances. To the extent that the limited objection of
19 Mr. Frishberg and Mr. Hermann remains, the Court overrules
20 it and approves this proposed settlement for the reasons
21 that I've explained. If you submit the order in Word
22 format, I'll be entered.

23 MR. KOENIG: Thank you, Your Honor. And again,
24 Chris Koenig. We've had a chance to look at the settlement
25 agreement. I don't see insider defined, so what we will do

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1 is we will add a definition to the proposed order that we
2 upload later today if that works for Your Honor.

3 THE COURT: All right. Okay. I would appreciate
4 it if you'd do that. Okay. All right. Let's move on, on
5 the agenda. That was the only contested matter. In the
6 uncontested matters, we have the first omnibus claims
7 objection for amended claims, duplicate claims, non-debtor
8 claims, unsupported claims, and inadequately supported
9 claims. Mr. Koenig?

10 MR. KOENIG: Your Honor, my colleague Ms. Jones
11 will be taking the lead on that matter.

12 THE COURT: Thank you very much. All right. Ms.
13 Jones?

14 MS. JONES: Good morning, Your Honor. Elizabeth
15 Jones of Kirkland and Ellis on behalf of the Debtors. Your
16 Honor, we filed our first omnibus claims objection at Docket
17 Number 2103, and the Affidavit of Service notifying which
18 Claimants were being objected to was filed at Docket Number
19 2111.

20 Your Honor, as you previously noted, we're
21 objecting or seeking to modify five different types of
22 claims. The first is we're seeking to disallow and expunge
23 83 claims that have been subsequently amended leaving those
24 subsequently amended claims on the register. We're seeking
25 to disallow and expunge 20 exact duplicate claims, again

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1 leaving the second file duplicate claim on the register.

2 We are -- third, we're seeking to disallow and
3 expunge three claims that were filed against non-debtor
4 entities. All three of these claims were filed related to
5 the Celsius Energy drink, not the Celsius Debtors. The
6 fourth category of claims is we're seeking to modify in the
7 order we requested 33 unsupported claims with amounts that
8 weren't -- we're seeking to modify them to the scheduled
9 amounts. We had one reach out before the objection deadline
10 to a pro se Creditor who had retained counsel. They were
11 getting up to speed, asked if we would adjourn that claim.
12 We were happy to adjourn it to the April 8th hearing.

13 That's Claim Number 8743.

14 THE COURT: Right.

15 MS. JONES: We noted that.

16 THE COURT: I think it's adjourned to April 18th,
17 not 8th.

18 MS. JONES: Oh, that's correct. Sorry if I said a
19 different date. April 18th.

20 THE COURT: All right.

21 MS. JONES: And then the fifth category is
22 modifying 12 inaccurately supported claims also to the
23 amounts listed on the schedule. Your Honor, we received no
24 objections, and the only communication we received was the
25 one request for an adjournment. Otherwise we had no

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1 responses or nothing else to resolve. So unless Your Honor
2 has any questions, we respectfully request entry of the
3 order. When we submit a proposed order to chambers, we will
4 provide a revised Schedule 4 that shows the redline removing
5 that one claim since it will be adjourned to April 18.
6 Otherwise, we are asking that it's entered as filed with the
7 motion.

8 THE COURT: All right. Does anybody else wish to
9 be heard? All right. No responses were filed, and no one
10 has asked to be heard during the hearing. The Court
11 sustains the first omnibus objection reducing, modifying, or
12 expunging the relevant claims as set forth in the schedules
13 in support of the motion with the exception of the one claim
14 that is being adjourned to April 18th. Thank you very much.

15 MS. JONES: Thank you, Your Honor. That's all
16 from me, and I will pass the lectern back now to my
17 colleague Mr. Koenig.

18 THE COURT: Thank you very much. All right. Go
19 ahead.

20 MR. KOENIG: Thank you, Your Honor. So up next
21 are the status conferences for three more substantive claims
22 objections. So I just wanted to provide a little bit of
23 context. We filed these claims objections to begin the
24 process of cleaning up our claims register. We need to do
25 that for both voting and distribution purposes. The Debtors

1 had obligations to return cryptocurrency assets worth
2 approximately \$4.2 billion as of the petition date to
3 approximately 600,000 account holders. And as of the bar
4 date, approximately 23,000 proofs of claim were filed
5 totaling over \$78 billion in claims, plus unliquidated
6 claims on top of that.

7 If those claims were allowed, that would mean that
8 just three percent of the accountholders would have claims
9 for over 18 times the value of the assets deposited on the
10 Debtor's platform. That's not fair and equitable in our
11 view given that all accountholders suffered the same harm,
12 the loss of their cryptocurrency in their Celsius accounts.

13 So we're working to clean up the claims register
14 and to do so promptly. That's important so that we can make
15 distributions as quickly as possible upon emergence from
16 bankruptcy and to not have to litigate all of these claims
17 before we can distribute our assets to accountholders. We
18 want to do that as fast as possible. So we filed these
19 claims objections really as Bellwethers, Your Honor.

20 Each of these Claimants has been very active in
21 these cases and filed a very detailed proof of claim that
22 had many different theories of recovery. And we understand
23 that Mr. Hermann distributed a form proof of claim for other
24 accountholders to fill out and submit. So we think that it
25 will be very efficient for us to proceed in this way and to

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1 seek rulings, substantive rulings, on these three proofs of
2 claim that were filed. And that if we are able to obtain a
3 ruling that the claims are limited to the amount of
4 cryptocurrency in their account, that'll speed up the claims
5 reconciliation process for everybody else.

6 Now, the main theory of our objections is that the
7 Debtors are already obligated to return the cryptocurrency
8 in the Celsius accounts contractually. So these additional
9 theories of recovery advanced by the Claimants are
10 duplicative and excessive. Now, of course after filing
11 these claims objections, the Court issued its opinion in the
12 Series B litigation, and found that the terms of use only
13 provide contractual relief against Celsius Network LLC. So
14 in light of that ruling, we're just proceeding as a status
15 conference here today. We're not seeking any substantive
16 relief at this time while we continue to plan our path
17 forward in light of that ruling.

18 As we discussed before, there's other theories
19 that could mean that the customers have claims against
20 assets other than LLC from substantive consolidation to an
21 intercompany claim, but we're still deciding and continuing
22 to review how we want to proceed. So for today, it's just a
23 status conference. And you know, we'd propose that the
24 substantive hearing on these claims objections be set for
25 April 18th, which is the next omnibus hearing date.

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1 THE COURT: Let me say first my chambers were
2 contacted by Mr. Frishberg who indicated he was unable to
3 appear today and requested that the conference with respect
4 -- the status conference with respect to his claim and the
5 objection to it be adjourned. He indicated that he'd made
6 the request of the Debtor, and Debtor's counsel declined to
7 agree to adjourn the hearing. Is that correct as to his
8 claim?

9 MR. KOENIG: Your Honor, what we -- that's
10 correct. What we wanted to do was to make sure that these
11 all went forward together. If we object Mr. -- if we
12 adjourn Mr. Frishberg's claim, it sort of doesn't make
13 sense. These all sort of go together (indiscernible) --

14 THE COURT: But they're all being adjourned. None
15 of them are being heard today.

16 MR. KOENIG: Correct. We wanted to have the
17 status --

18 THE COURT: (Indiscernible) --

19 MR. KOENIG: I'm sorry, Your Honor.

20 THE COURT: No, and I just -- as you're aware, Mr.
21 Frishberg has regularly appeared at these hearings, been
22 active throughout, and I'm certainly not precluding him at a
23 subsequent hearing from raising anything that he would
24 otherwise raise today. I think the Debtor's counsel has
25 been quite cooperative when requests to adjourn specific

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1 hearings -- you know, matters have been raised. And I guess
2 I was a little surprised that you wouldn't agree to Mr.
3 Frishberg's request for today.

4 Let me raise some questions for you, not to be
5 resolved today, but I understand that in the three claims
6 that you listed for the status conference today, and it
7 certainly applies more broadly, the issues of whether earn
8 accountholders are limited in their recovery to the amounts
9 -- amount of coins that were deposited in their accounts
10 obviously is an important issue. I don't have the language
11 of the terms of use in front of me. I believe they include
12 in effect a no consequential damages provision in it.

13 I'm going to need briefing on the issue of whether
14 a no consequential damages provision in terms of use would
15 preclude recovery of consequential or other damages on non-
16 contract theories. So I mean, I think first the issue of
17 the enforceability of a limitation of damages provision in a
18 contract, but more broadly the issue of whether that
19 limitation, even if it applies as to contract claims, could
20 limit damages on non-contract theories.

21 What I've seen so far I don't think you've really
22 fully addressed that issue. In light of my opinion limiting
23 contract claims to earn accounts -- to the LLC Debtor, I
24 think that question will arise more broadly with respect to
25 any damage claims against other than LLC, whether they're

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1 Debtors or Non-Debtors. So I just want to lay down this
2 place marker now, Mr. Koenig, that I'm going to need
3 briefing that addresses limitations of liability provisions,
4 whether they apply. A, do they apply to the contract
5 claims; and B, do they apply to non-contract claims as well?
6 Today is not the time to explore that, but I think it will
7 have to be.

8 I'm also aware generally that a new adversary
9 proceeding was filed by Mr. (Indiscernible) represented by
10 counsel with claims against Debtors and Non-Debtors other
11 than LLC. And I think I assume that that picks up from the
12 Court's ruling on that nothing in my really -- in the last
13 written opinion that it does not -- nothing precludes claims
14 against -- other than LLC on tort claims, for example, or
15 other statutory claims. So those will all have to be
16 addressed, but let me stop there. I don't know whether you
17 have any comment or Mr. Colodny on behalf of the Committee
18 has any comments he wants to make.

19 MR. KOENIG: Your Honor, again, Chris Koenig.
20 Thank you. That's very helpful feedback, and we'll be sure
21 to submit briefing ahead of the April 18th hearing in
22 advance enough for the other parties to have a chance to
23 review the briefing and submit whatever they feel is
24 appropriate. But thank you for that guidance. It's helpful
25 in this status conference.

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1 THE COURT: Look, I want to be sure that when you
2 do file something that Creditors and the Committee have an
3 opportunity to respond to that. And so we don't -- you
4 know, the plan I think is to go forward on April 18th, but I
5 want to be sure. What I would ask you to do -- well, let me
6 ask Mr. Colodny what the position of the Committee is. Does
7 it have a position at this point?

8 MR. COLODNY: Your Honor, we worked with the
9 Debtors after your opinion was issued to ensure that we
10 would be able to do just that, to respond in light of the
11 changed legal circumstances to make sure that if the Court's
12 ruling and what we believe these Creditors' rights are
13 protected. And I think that you are getting exactly what we
14 were trying to achieve, which is an opportunity to make sure
15 that all Creditors have an opportunity to respond to these
16 Bellwether cases if they're going to be used to enact the
17 rights of all Creditors.

18 THE COURT: So is there -- have you agreed -- did
19 you seek to agree on a schedule? Again, I don't want to
20 find that, you know, the day before the hearing I suddenly
21 get bombarded with a lot of briefs. I always try to be
22 fully prepared when we go forward with a hearing. So I
23 would like -- I guess I would like the Committee, and if
24 these are the three claims that are going to be -- to use
25 your term the Bellwether, I'm particularly focused on the

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1 issue of -- I want -- my term, not yours, I want it to be a
2 fair fight. I want to be sure that, you know, that it isn't
3 three pro se Creditors who are forced to address serious
4 important complex legal issues, you know. Let me leave it
5 at that.

6 What I would urge you to do is try and agree on a
7 schedule that can be put in a stipulation and that the Court
8 can approve. Again, I want to be sure that the Court really
9 has -- before I rule on these -- the objections to these
10 three claims, that there's been a full airing and briefing
11 of the legal issues that arise. I'm sure, you know -- well,
12 let me leave it at that. I don't know. Mr. Colodny, do you
13 have anything you want to add?

14 MR. COLODNY: No, Your Honor. I would say that we
15 need to speak with the Claimants to make sure that they're
16 okay with the schedule. Because ultimately, this is their
17 claims and we need to make sure that they have the
18 opportunity as you just pointed out.

19 THE COURT: Well, and it's -- you know, the -- in
20 terms of that last opinion, the Committee agreed with the
21 Debtor that the claims resided against all Debtor and Non-
22 Debtor entities. Obviously, that view did not carry the
23 day, except I made crystal clear that for non-contract
24 claims there could be -- not that there was, but there could
25 be claims. I don't know what position the Committee's going

1 to take.

2 Certainly, the Committee, for example, I think
3 took the position that substantive consolidation appears to
4 be appropriate. So I think the Committee position was
5 trying to expand not necessarily the quantum of damages
6 recoverable, but the entities against which recovery could
7 be had. So you know, I'm -- this is an important issue from
8 the Court's standpoint.

9 MR. COLODNY: It's an important issue for us, Your
10 Honor, and I think that you, in a footnote of your opinion,
11 noted that there were a number of different paths that,
12 notwithstanding the opinion, all of the value would still go
13 to accountholders. One of those is the substantial
14 intercompany claim, which I know you requested the Debtors
15 to submit briefing on. Another is the substantive
16 consolidation.

17 And then there are other claims towards that may
18 be asserted by a Debtor entity by individuals. There's a
19 number of pathways here. We had previously sought to have
20 all of those heard together in connection with confirmation.
21 We understand that we went forward with the contract issue,
22 but we don't think that that contract issue is
23 determinative. At the end of the day, we think that there
24 are a number of different things that we need to -- or
25 hurdles that the preferred equity need to jump and prove

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1 before they get to a recovery, and we intend to tee those up
2 in the near future.

3 THE COURT: All right. Mr. Koenig, anything you
4 want to add at this point?

5 MR. KOENIG: No. Thank you, Your Honor. We'll
6 confer with the Committee and the parties and propose a
7 schedule and a stipulation.

8 THE COURT: All right. Thank you. All right. So
9 those are the status conferences. Then there's the list of
10 adjourned matters. I did agree to have a hearing later this
11 week with respect to some of those. Anything you want to
12 add? Anything else for today?

13 MR. KOENIG: No, Your Honor. We're all set.
14 We'll see you on Thursday morning.

15 THE COURT: All right. We are adjourned. Thank
16 you very much.

17 MR. KOENIG: Thank you.

18 MR. COLODNY: Thank you, Your Honor.

19 (Whereupon these proceedings were concluded)

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5

6 *Sonya M. Ledanski Hyde*

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8 Sonya Ledanski Hyde

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23 Mineola, NY 11501

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25 Date: March 23, 2023

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